

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DORNE DECHENT and GEORGE DECHENT, her
husband,

Plaintiffs,

vs.

Civil Case No. 1:22-cv-335

TK ELEVATOR CORPORATION, formerly known as
THYSSENKRUPP ELEVATOR CORPORATION,

Defendant.

NOTICE OF REMOVAL

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

TO: CLERK, ERIE COUNTY SUPREME COURT, BUFFALO, NEW YORK

Defendant, TK Elevator Corp (hereinafter "TKE"), by its attorneys, Osborn, Reed & Burke, LLP and Jeffrey P. DiPalma, Esq., of counsel, respectfully represents:

1. That TKE is the only named defendant in the matter of Dechent et. al. v. TK Elevator Corp. now pending in New York State Supreme Court, Erie County, under Index Number 801041/2022, which was commenced by the filing of a summons and complaint with the Erie County Clerk, in the New York State Supreme Court on or about January 26, 2022. A copy of the summons and complaint is attached hereto as **Exhibit A**.
2. That plaintiffs did not specify the amount of monetary damages in their complaint. [Ex. A]
3. That plaintiffs completed service of TKE pursuant to NY Business Corp. Law § 306 on February 8, 2022 with the filing of and affidavit of service on the New York Secretary of State. [**Exhibit B**]
4. That based upon information and belief, the source being the plaintiffs' summons and complaint, the plaintiffs, Dorne Dechent and George Dechent, were each residents of the

State of New York at the time of the filing of the above referenced summons and complaint.

[Ex A, Summons Caption; Ex A ¶ 1]

5. That at all times relevant to this action, including the filing of this notice, TKE is and remains a Delaware Corporation with its principal place of business at 11605 Haynes Bridge Rd., Suite 650, Alpharetta, Georgia. **[Exhibit D]**
6. That plaintiffs concede that TKE is a corporation foreign to New York [Ex A, ¶ 2]
7. That on March 4, 2022, TKE served plaintiffs with its Request for Supplemental Relief, pursuant to C.P.L.R. 3017(c). **[Exhibit E]**
8. That on March 4, 2022, TKE served plaintiff with its Answer. **[Exhibit F]**
9. That on May 4, 2022, plaintiffs served their response to TKE's C.P.L.R. 3017(c) request indicating that they are seeking total damages in the amount of \$1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND AND ZERO DOLLARS). **[Exhibit G]**
10. That plaintiffs' response to TKE's C.P.L.R. 3017(c) is the first paper that explicitly establishes removability of this action.
11. At the time of the filing of this Notice of Removal, there is complete diversity of citizenship between the parties.
12. That based upon information and belief, the source being the New York State Unified Court System E-Filing for Erie County Supreme Court **[Exhibit C]**, the documents filed in conjunction with the above referenced New York State civil action under Index Number 801041/2022 are:
 - a. Summons + Complaint; [Ex C, Doc # 1]
 - b. Affirmation/Affidavit of Service on TKE; [Ex C, Doc # 2]
 - c. Affirmation/Affidavit of Service on TKE pursuant to CPLR 3215(g)(4)(ii); [Ex C, Doc # 3]

- d. Exhibit A-Notice of E-Filing; [Ex C, Doc # 4]
- e. Affirmation/Affidavit of Service proof of mailing on TKE; [Ex C, Doc # 5]
- f. Demand For: TKE's CPLR 3017 Demand to Pltf; [Ex C, Doc # 6]
- g. Answer. [Ex C, Doc #7]

13. Since plaintiffs are citizens of New York and no existing and/or served defendant is a citizen of the State of New York and the amount in controversy exceeds \$75,000, TKE asks that this action be removed pursuant to Title 28, United States Code, Section 1332(a) and Section 1441(b) because diversity exists between the parties.

14. TKE, pursuant to Fed. R. Civ. P. 38, makes written demand for trial by jury on all issues raised in plaintiffs' complaint.

WHEREFORE, the matter of Dechent et. al. v. TK Elevator Corp. now pending in New York State Supreme Court, Erie County, under Index Number 801041/2022, is hereby removed therefrom to the United States District Court for the Western District of New York.

Dated: Rochester, New York
May 5, 2022

Jeffrey P. DiPalma

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